



Billing Code 6325-63

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1603 and 1652

RIN 3206-AN56

Federal Employees Health Benefits Acquisition

Regulations: Self Plus One and Contract Matrix Update

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing this proposed rule to update its regulations concerning “self plus one” and the contract matrix. OPM is updating the Federal Employees Health Benefits Acquisition Regulations (FEHBAR) to include a recently added enrollment type called “self plus one” to the carrier advertising instructions and also provides notice to interested stakeholders that we are updating and clarifying the contract clause matrix.

DATES: OPM must receive comments by [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number and/or

Regulatory Information Number (RIN) and title, by the following method:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public

is to make these submissions available for public viewing at [http:// www.regulations.gov](http://www.regulations.gov) as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Senior Policy Analyst, at Michael.Kaszynski@opm.gov or 202-606-1994.

SUPPLEMENTARY INFORMATION: This proposed regulation amends the FEHBAR to list a “self plus one” enrollment type in the carrier advertising instructions so that carriers will be required to list all current enrollment types when advertising their health plans enrollment codes and premium rates to enrollees. This change is a technical correction and does not alter current FEHB family member eligibility guidelines.

This proposed regulation also provides notice to interested stakeholders that we are updating and clarifying the contract clause matrix. Annually, OPM determines which FAR and FEHBAR contract clauses are applicable to FEHB carrier contracts and we include the appropriate clauses in the carrier contracts. We also publish clauses and clause headings in the FEHBAR in order to give the clauses legal regulatory authority. This gives new carriers joining the FEHB Program the benefit of seeing OPM’s required clauses in regulation for consideration prior to submitting an application for participation in the FEHB Program. This proposed regulation brings the contract clause matrix in line with the current Federal Acquisition Regulations (FAR) and FEHBAR contract clauses used in all Federal Employees Health Benefits (FEHB) Program carrier contracts.

Section 706 of the Bipartisan Budget Act of 2013 amended chapter 89 of title 5 United States Code (U.S.C) by adding a self plus one enrollment type for Federal employees and annuitants under the FEHB Program. The self plus one enrollment type became available during

the 2015 Open Season for the 2016 plan year and was codified in a final rule at <https://www.federalregister.gov/documents/2015/09/17/2015-23348/federal-employees-health-benefits-program-self-plus-one-enrollment-type>. A self plus one enrollment covers the enrollee and one eligible family member, designated by the enrollee. Eligible family members under a self plus one enrollment include a spouse or eligible child as set forth in §890.302 of title 5 CFR.

OPM manages the FEHB program which is executed with contractors managing and providing the FEHB benefits to government employees. This rule proposes to update the Federal Employee Health Benefits Acquisition Regulations (FEHBAR) to implement the “self plus one” program via FEHB contracts, and make the FEHB contract clauses consistent with current FAR and FEHBAR clause requirements. Specifically, the regulation amends the FEHBAR at 48 CFR part 1603 to list a self plus one enrollment type in the advertising instructions. OPM considers this change a technical correction as it does not change the operational requirements of the FEHB program and does not alter current FEHB family member eligibility guidelines.

This regulation also provides notice to interested stakeholders that we are updating the contract clause matrix at 48 CFR 1652.370. This will bring the matrix in line with current FAR and FEHBAR contract clauses used in all FEHB Program carrier contracts. The matrix at FEHBAR section 1652.370 lists the FAR and FEHBAR clauses to be used in contracts based on cost analysis and contracts based on a combination of cost and price analysis. Carriers must comply with all matrix clauses during their participation in the FEHB Program. Certain contract clauses are mandatory for FEHB contracts and others are used only when made applicable by pertinent sections of the FAR or FEHBAR. This regulation updates the matrix to include all current contract clauses.

Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 also emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under EO 12866.

Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not expected to be an EO 13771 regulatory action because this proposed rule is not significant under EO 12866.

Regulatory Flexibility Act

The Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of state, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not

significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of no agency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves an OMB approved collection of information subject to the PRA Health Benefits Election, SF 2809, OMB no. 3206-0160. The public reporting burden for this collection is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 9,000 hours. The systems of record notice for this collection is: OPM SORN GOVT-1 General Personnel Records and OPM SORN CENTRAL-18-Federal Employees Health Benefits Program Claims Data Warehouse.

List of Subjects in 48 CFR Parts 1603 and 1652

Government employees, Government procurement, Health insurance, Reporting and recordkeeping requirements.

OFFICE OF PERSONNEL MANAGEMENT.

Alexys Stanley,
Regulatory Affairs Analyst.

Accordingly, OPM is proposing to amend title 48, Code of Federal Regulations, parts 1603 and 1652 as follows:

PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for part 1603 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. Section 1603.7002 paragraph (e) is revised to read as follows:

1603.7002 Additional guidelines.

(e) Not give instructions on enrollment. Statements on enrollment procedures, requirements, or eligibility shall be limited to those such as: To sign up, fill out a Health Benefits Election Form

(Standard Form 2809) from your personnel office indicating the enrollment you want or use your agency's electronic enrollment system:

The enrollment codes for (plan's name) are:

Self Only __ Enrollment Code ____

Self Plus One __ Enrollment Code ____

Self and Family __ Enrollment Code __

The form must then be returned to your personnel office before the (date) deadline. Your (plan's name) coverage will begin the first pay period in January, (year). If you are a retired Federal employee and need forms, contact the Office of Personnel Management, 1900 E. Street NW, Attn: Retirement Benefits Branch, Washington, DC 20415 or visit www.opm.gov/forms.

PART 1652—CONTRACT CLAUSES

3. The authority citation for part 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

4. Section 1652.370 is revised as follows

1652.370 Use of the matrix.

(a) The matrix in this section lists the FAR and FEHBAR clauses to be used with contracts based on cost analysis and contracts based on a combination of cost and price analysis. Carriers shall submit initial applications and requests for renewals on the basis that the new contract or contract renewal will include the clauses indicated.

(b) Certain contract clauses are mandatory for FEHBP contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or FEHBAR. An "M" in the "Use

	FEHBP Clause Matrix			
Clause	Title	Use Status	Use With Experience Rated	Use with Community Rate

Status” column indicates that the clause is mandatory. An “A” indicates that the clause is to be used only when the applicable conditions are met.

(c) Clauses are incorporated in the contract either in full text or by reference. If the full text is to be used, the matrix indicates a “T”. If the clause is incorporated by reference, the matrix indicates an “R”.

			Contracts	Contracts
FAR 52.202-1	Definitions	M	T	T
FAR 52.203-3	Gratuities	M	T	T
FAR 52.203-5	Covenant Against Contingent Fees	M	T	T
FAR 52.203-7	Anti-Kickback Procedures	M	T	T
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions	M	T	T
FAR 52.203-13	Contractor Code of Business Ethics and Conduct	M	T	T
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	M	T	T
FAR 52.203-19	Prohibition Requiring Internal Confidentiality Agreements or Statements	M	T	T
FAR 52.204-7	System For Rewards Management	M	T	T
FAR 52.204-9	Personnel Identity Verification of Contractor Personnel	M	T	T
FAR 52.204-21	Basic Safeguarding of Contractor Information Systems	M	T	T
FAR 52.209-9	Updates of Publically Available Information Regarding Responsibility Matters	M	T	T
1652.203-70	Misleading, Deceptive, or Unfair Advertising	M	T	T
1652.204-70	Contractor Records Retention	M	T	T
1652.204-71	Coordination of Benefits	M	T	T
1652.204-72	Filing Health Benefit Claims/Court Review of Disputed Claims	M	T	T
1652.204-73	Taxpayer Identification Number	M	T	T
1652.204-74	Large Provider Agreements	M	T	

FAR 52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	M	T	T
FAR 52.215-2	Audit & Records—Negotiation	M	T	T
FAR 52.215-10	Price Reduction for Defective Cost or Pricing Data	M	T	
FAR 52.215-12	Subcontractor Certified Cost or Pricing Data	M	T	
FAR 52.215-15	Pension Adjustments and Asset Reversions	M	T	
FAR 52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	M	T	
1652.215-70	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data	M	T	T
1652.215-71	Investment Income	M	T	
1652.216-70	Accounting and Price Adjustment	M		T
1652.216-71	Accounting and Allowable Cost	M	T	
FAR 52.219-8	Utilization of Small Business Concerns	M	T	T
FAR 52.222-1	Notice to the Government of Labor Disputes	M	T	T
FAR 52.222-3	Convict Labor	M	T	T
FAR 52.222-4	Contract Work Hours and Safety Standards Act--Overtime Compensation	M	T	T
FAR 52.222-21	Prohibition of Segregated Facilities	M	T	T
FAR 52.222-26	Equal Opportunity	M	T	T
FAR 52.222-29	Notification of Visa Denial	A	T	T
FAR 52.222-35	Equal Opportunity for Veterans	M	T	T
FAR 52.222-36	Equal Opportunity for Workers With Disabilities	M	T	T
FAR 52.222-37	Employment Reports on Veterans	M	T	T
FAR 52.222-50	Combating Trafficking in Persons	M	T	T

FAR 52.222.54	Employment Eligibility Verification	M	T	T
1652.222-70	Notice of Significant Events	M	T	T
FAR 52.223-6	Drug-Free Workplace	A	T	T
FAR 52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	M	T	T
1652.224-70	Confidentiality of Records	M	T	T
FAR 52.227-1	Authorization and Consent	M	T	T
FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	M	T	T
FAR 52.229-4	Federal, State and Local Taxes (State and local Adjustments	M	T	T
1652.229-70	Taxes—Foreign Negotiated Benefits Contracts	A	T	T
FAR 52.232-8	Discounts for Prompt Payment	M	T	T
FAR 52.232-17	Interest	M	T	T
FAR 52.232-23	Assignment of Claims	A	T	T
FAR 52.232-33	Payment by Electronic Funds Transfer--System for Awards Management	M	T	T
1652.232-70	Payments—Community-Rated Contracts	A		T
1652.232-71	Payments—Experience-Rated Contracts	A	T	
1652.232-72	Non-Commingling of FEHBP Funds	M	T	
1652.232-73	Approval for Assignment of Claims	M	T	T
FAR 52.233-1	Disputes	M	T	T
FAR 52.233-4	Applicable Law for Breach of Contract Claim	M	T	T
FAR 52.239-1	Privacy or Security Safeguards	M	T	T
FAR 52.242-1	Notice of Intent to Disallow Costs	M	T	
FAR 52.242-3	Penalties for Unallowable Costs	M	T	
FAR 52.242-13	Bankruptcy	M	T	T
1652.243-70	Changes--Negotiated Benefits Contracts	M	T	T

FAR 52.244-5	Competition in Subcontracting	M	T	
FAR 52.244-6	Subcontracts for Commercial Items	M	T	
1652.244-70	Subcontracts	M	T	
1652.245-70	Government Property (Negotiated Benefits Contracts)	M	T	T
FAR 52.246-25	Limitation of Liability—Services	M	T	
1652.246-70	FEHB Inspection	M	T	T
FAR 52.247-63	Preference for U.S.-Flag Air Carriers	M	T	T
1652.249-70	Renewal and Withdrawal of Approval	M	T	T
1652.249-71	FEHBP Termination for Convenience of the Government--Negotiated Benefits Contracts	M	T	T
1652.249-72	FEHBP Termination for Default--Negotiated Benefits Contracts	M	T	T
FAR 52.251-1	Government Supply Sources	A	T	
FAR 52.252-4	Alterations in Contract	A	T	T
FAR 52.252-6	Authorized Deviations in Clauses	M	T	T

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